IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 413 OF 1994

The State of Maharashtra. ... Appellant.

Vs.

Shri Deepak Vasudeo Wadkar. ... Respondent.

Mr. Swapnil S. Pednekar A. P. P., for the appellants.
Mr. A. S. Khandeparkar, for respondent.

CORAM :- SMT. RANJANA DESAI, J.

DATED :- 7TH OCTOBER, 2006.

ORAL JUDGMENT:-

1. The State of Maharashtra has challenged the Judgment and order dated 20/12/1993, delivered by the Judicial Magistrate, First Class, Kudal in Regular Criminal Case No. 63 of 1985, acquitting the respondent of the offences punishable under Section 420, 406 and 468 of the Indian Penal Code.

2. It is necessary to begin with the facts of the case. The

Complainant, P.W.1 Nandkumar Vasudeo Dighe was working as a Branch Manager since 1984 at Dena Bank , Kudal Branch. Dena Bank had started Daily Deposit Scheme ("DDS" for short) since 1978 at Kudal. Accused, Deepak Vasudeo Wadkar was appointed as an agent in the year 1978. As per this scheme, the accused was to accept the amount from the customers and it was to be deposited in the bank. Agreement to that effect was entered into by the accused with the bank. The accused was given, the printed forms of daily deposits, pass-books and the papers required for opening accounts of the customers, as a representative of the bank. He was required to issue a receipt, whenever any amount was accepted by him as a representative of the bank. One copy of the receipt was given to the bank along with summary sheet and one copy was to be retained by him. On the receipt being deposited in the bank, the concerned officer of the bank had to go through the amount mentioned in the receipt and if it tallied with the summary sheet, he had to accept the same. One copy of the summary sheet was returned to the representative of the bank. The amount received was credited in Daily Deposit Suspense Receipt Account.

3. According to the prosecution, on 14/02/1985, one customer

of the bank i. e. P.W.4, Shambha Purushottam Rane, came to the bank for closing his account. He presented his pass-book. On perusal of the pass-book, it was seen that between 20/04/1983 to 07/02/1985, an amount of Rs. 7570/- was deposited on various dates. However, only an amount of Rs. 6540/- was shown to his credit in his account bearing No. 1220. The case of the prosecution is that, amount of Rs.1030/- was not deposited by the accused in the bank though he had signed in the pass-book showing that he had accepted the said amount. Thus, the prosecution case is that, the accused had misappropriated the amount of Rs. 1030/- from account No. 1220.

4. According to the prosecution, on 15/02/1985, Tulshiram Balkrishna Kudalkar having an account with the bank bearing No. 1560, came to the bank to enquire about his balance. In his pass-book an amount of Rs.6000/- was shown as deposited in account No.1560 during 16/01/1985 to 07/02/1985. Similarly, in the pass-book of his brother Sakharam Kudalkar, in Account No.1562, an amount of Rs.3300/- was shown as having been credited during 18/01/1985 to 13/02/1985. These accounts however, were not opened in the bank. It is the case of the prosecution that, the accused had signed both these pass-books showing that he had accepted the amount. Thus, he

had misappropriated Rs.9300/- by preparing forged pass-books. According to the prosecution, the accused has thus, misappropriated an amount of Rs.10330/- by deceiving the customers. On these allegations, the accused came to be charged with the offences punishable under Sections 420, 406 and 468 of the Indian Penal Code.

5. The accused pleaded not guilty and claimed to be tried. His defence was of total denial.

6. In support of its case, the prosecution examined as many as 11 witnesses. P.W.1 Nandkumar Vasudeo Dighe is the Branch Manager, who has lodged the complaint. P.W.2 Tulshidas Balkrishna Kudalkar, P.W.3 Sakharam Balkrishna Kudalkar and P.W.4 Shambha Purushottam Rane are the customers of the bank who claim to have been defrauded by the accused. P.W.5 Balkrishna Pandurang Sawant, P.W.6 Ratnakar Raghunath Narvekar and P.W.7 Parshuram Sitaram Korgaonkar are the panch witnesses. P.W.8 Govind Laxman Ghatage is the investigating officer. P.W.9 Firoj Issak Shaikh is the hand-writing expert, whose opinion is at Exhibit 211. P.W.10 is Vijaykumar Bhimashankar Dhurpe was the Branch Manager of the Kudal branch in the year 1983. He had issued the appointment letter to the accused as a Daily Deposit Collector. P.W.11 Vishwanath Narayan

Thakur was working as a Regional Manager of Dena Bank at Pune from 1980 to 1984. He had signed the appointment order of the accused.

7. After perusing the evidence on record, the learned Judicial Magistrate, First Class, Kudal was of the view that the prosecution had failed to prove its case beyond reasonable doubt. He, therefore, acquitted the accused and hence, this appeal by the State of Maharashtra.

8. I have heard at considerable length the learned Assistant Public Prosecutor in support of the appeal and Mr. Khandeparkar, learned counsel for the accused. With their help I have gone through the evidence and the relevant records of the case.

9. The learned Assistant Public Prosecutor seriously contended that the impugned Judgment and order needs to be interfered with by this Court. He submitted that the learned Magistrate has not given any cogent reasons as to why he has disbelieved the evidence of P.W.2 Tulshidas, P.W.3 Sakharam and P.W.4 Shambha Purushottam Rane, who have categorically stated that the accused had accepted the money from them. He submitted that the learned Magistrate should have appreciated that, so far as P.W.2 Tulshidas

and P.W.3 Sakharam are concerned, the accused even did not open the account in the bank. The learned Assistant Public Prosecutor urged that the case of these witnesses that the accused signed on the pass-book is supported by the evidence of the hand-writing expert, P.W.9 Firoj Issak Shaikh. There was, therefore, no reason for the learned Magistrate not to convict the accused, on the basis of the evidence of P.W.9 Firoz Issak Shaikh, the hand-writing expert. The learned Assistant Public Prosecutor stated that it is true that the panch witnesses have not supported the prosecution case. However, P.W.8 Govind Laxman Ghatage the Investigating Officer has categorically stated that he had taken specimen signatures of the accused and the panchanama to that effect is made and therefore, there is absolutely no doubt about the fact that specimen signatures of the accused were taken and sent to the hand-writing expert. The Learned Assistant Public Prosecutor placed reliance on two judgments of the Supreme Court in support of his submission that, testimony of a hostile witness should not be discarded in its entirety but it should be scrutinized cautiously and accepted to the extent it supports the prosecution. He drew my attention to the judgments of the Supreme Court, in **State of Rajasthan Vs. Teg Bahadur and others (2004) 13 Supreme Court**

Cases 300 and Ram Swarup and others Vs. State of Rajasthan (2004) 13 Supreme Court cases 134. The learned Assistant Public Prosecutor urged that, in the circumstances, this court should set aside the judgment and order of acquittal and convict the accused in accordance with law.

10. Mr. Khandeparkar, learned counsel appearing for the respondent-accused, on the other hand, submitted that the impugned judgment and order can not be characterized as perverse. He submitted that the view taken by the learned Magistrate is a reasonably possible view, which does not deserve to be interfered with in an appeal against acquittal. He submitted that, since the panch witnesses have turned hostile, it is risky to rely on the investigating officer and hold that specimen signatures of the accused were taken and sent to the hand-writing expert. He further submitted that, none of the witnesses, examined by the prosecution, have produced receipts of the deposits. This fact casts a shadow of doubt on prosecution story. Mr.Khandeparkar contended that the evidence of prosecution witnesses does not inspire confidence. He submitted that in the circumstances this Court should set aside the judgment and order of acquittal.

11. I have given my anxious consideration to the submissions advanced by both sides. P.W.1 Nandkumar Vasudeo Dighe, the Branch Manager has narrated the procedure, which is followed by the bank, while operating DDS. He has stated that the agent has to canvass for account. He has to collect daily amounts from the individual account holders. It is his duty to give receipts to the depositors. One receipt is kept in possession of the agent, one receipt is given to the depositor and one receipt is to be submitted to the bank along with summary sheet for collection of that day. It is the duty of the agent to collect the amount day to day and to deposit the same along with the summary sheet in the bank. P.W.1 Dighe has further stated that, on 14/02/1985, P.W.4, Shri Rane came to the bank as he wanted to close his account. On checking, it was found that there was some difference in the pass-book and the register of the bank. It was noticed that amount of Rs.1030/- was shown extra in the account of P.W.4 Shri Rane. According to this witness, on 15/02/1985 P.W.2 Tulshidas Kudalkar came to the bank along with DDS pass-book Nos. 1560 and 1562. He has stated that on these pass-books there were signatures of the accused. According to him, in one pass-book amount of Rs. 3300/- was shown and in another pass-book amount of

Rs. 6000/- was shown. However, no such accounts were entered in the register. He therefore, seized the same and gave receipts to the parties. Thus, the accused has misappropriated Rs. 10330/-. In his cross-examination, he stated that, accused had filed 87 summary sheets on record. He used to hand over the summary sheets, receipts and cash to the cashier who used to record the scroll. Thereafter, the deposits of one week were to be entered in the respective accounts. He has further stated that, accounts of Tulshidas Kudalkar and Sakharam Kudalkar were not opened in the bank and thus, the accused had swindled the amount collected by him from P.W.2 Tulshidas Kudalkar and P.W.3 Sakharam Kudalkar.

12. It is an admitted position that, neither P.W.1 Dighe, nor P.W.2 Tulshidas Kudalkar, P.W.3 Sakharam Kudalkar and P.W.4 Rane, have produced receipts of the deposits on record. If it is the case of the prosecution that as per the procedure the accused had to give receipts to the depositors and one copy of receipt had to be filed with the bank, receipts would have been the best piece of evidence to establish the complicity to the accused. It is surprising that, the said receipts are not on record. It is pertinent to note that, in the cross-examination, this witness has admitted that, he had filed 87 summary

sheets on record which were presented by the accused in the bank along with the deposits with a list. Therefore, the accused had been in touch with the bank officers for long period. In the cross-examination, this witness has further admitted that in DDS scheme, the agents were to collect the deposits from the account holders and were to deposit them on the next day in the bank. The summary sheets were required to be checked by the cashier and passing officer. He has further stated that, on majority summary sheets there were no signatures of cashier and passing officers regarding checking of the summary sheets. He has admitted that the summary sheets were not regularly checked and the copies of receipts filed in the summary sheets are not placed on record. He has further admitted that, he had not made any enquiry about the pass-book, issued to the accused and its use done by the accused and prior to his arrival no one had checked the pass-book. He has further admitted that, one Rane was looking after the account of DDS and before he joined the Kudal Branch in 1984, Rane was already suspended. He has further admitted that there was an enquiry held by the department regarding the amounts embezzled in the DDS but he does not know what was the result of that enquiry.

13. In my opinion, these admissions of P.W.1 Dighe reflect on the credibility of the prosecution story. I have already stated that, receipts which were the best piece of evidence, are not on record and no explanation is given, as to why they are not produced on record. The bank officers have obviously been totally negligent. During the relevant period there appears to be chaos in the bank. It is difficult, therefore, to locate the culprit and hold him solely responsible. This witness has admitted that, on majority sheets, there was no signature of cashier and passing officer. Admittedly agents work on commission basis and after they deposit the amounts with summary sheets, that amount has to go to Suspense DDS Account. Therefore, the cashier who receives the amounts will also be responsible for looking after the account of DDS and if there is any misappropriation, possibility of his involvement cannot be ruled out. This witness has admitted that, during the relevant period cashier Rane was suspended in connection with the enquiry, held by the department, regarding the amount embezzled in DDS. In such circumstances, in my opinion, it will be hazardous to hold that it is the accused, who is responsible for the alleged misappropriation. It is also pertinent to note that P.W.1 Dighe has categorically stated that, so far as P.W.4 Rane is concerned,

amount of Rs. 1030/- was shown extra in his account and he has denied that, ultimately only difference of Rs. 30/- was found in the account of Mr. Rane. P.W.4 Rane has in his evidence clearly stated that the only difference in the amount paid by him to the accused and the amount deposited by the accused in the bank, was Rs. 30/- and that the accused had swindled that amount. He has surprisingly stated in the cross-examination that he did not know, who misappropriated the amount of Rs.30/-. Therefore, P. W.1 Nandkumar Dighe's evidence is not consistent with the evidence of P. W. 4 Rane. So far as, P.W.2 Tulshidas and P.W.3 Sakharam are concerned, I have already noted that, they have not produced the receipts. It is pertinent to note that P.W.2 Tulshidas has stated that, he had not filled any form for opening DDS account. He has further stated that, pass-book was never delivered by the accused to him during pendency of the account and that the accused never issued any receipts to him. This witness runs a Permit Room, a Goldsmith's shop and Jewellery show room. He has admitted that, he had 8 to 10 accounts in DDS and all these accounts are dealt with by the accused. It does not stand to reason that, such a witness would not insist on passbook or receipts for the payment made by him. It is also not

conceivable that, he would not have filled a form for opening the DDS Account. The evidence of Sakharam P.W.3 also suffers from similar infirmities. In my opinion, it is unsafe to rely on these witnesses.

14. That takes me to the evidence of P.W.4 Rane. This witness has admitted that while recording the entry in his pass-book, the accused marked Rs. 5600/- in place of Rs. 4600/- and the only difference in the amount paid by him to the accused and deposited by accused in the bank was Rs. 30/- While deposing in examination-in-chief, this witness stated that the accused swindled the amount of Rs. 30/-. In the cross-examination, he stated that it is not known who misappropriated the amount of Rs. 30/-. In my opinion, on the basis of such inconsistent evidence, the accused cannot be held guilty of having misappropriated any amount as alleged by the prosecution.

15. That takes me to the evidence of hand-writing expert, on which the learned Assistant Public Prosecutor has placed heavy reliance. It is true that as per hand-writing expert's opinion, which is at Exhibit-211, the entries in the pass-books are in the hand writing of the accused. He has stated that, specimen signature of the accused were forwarded to him and after carrying out the tests, he came to the conclusion that all the disputed handwriting and numbers were of the

same person who had written admitted hand writing and numbers. Ordinarily, this opinion would have carried a great weight, but in this case the panch witnesses have turned hostile. Therefore, there is no independent evidence to support the case of the prosecution that specimen signatures of the accused were taken under panchanama. It is true that, investigating officer P.W.8, Govind Ghatage has stated that he had obtained specimen handwriting of the accused vide panchanama Exhibit-134. However, the specimen signatures were not shown to him. In any case, in the facts of this case, it is not possible to place reliance on the interested testimony of the investigating officer when the panchas have not supported the prosecution case. It is true that in **Ram Swarup and others Vs. State of Rajasthan (2004) 13 Supreme Court cases 134,** the Supreme Court had stated that evidence of a witness cannot be discarded merely because he is declared hostile. In **Teg Bahadur's case (supra),** the Supreme Court has again reiterated the same principle and stated that testimony of hostile witnesses should be scrutinized and it can be accepted to the extent to which it is consistent with the prosecution case. There can be no dispute about this settled proposition of law but in the present case, I am of the opinion that this principle cannot be extended as the

three witnesses have completely resiled from the prosecution case and it is difficult to draw any support from their evidence. Moreover, in an appeal against acquittal, it is difficult to adopt such approach. I am of the opinion that, the view taken by the learned Magistrate is a reasonably possible view. It is not possible to say that the prosecution has laid cogent and convincing evidence. A doubt is indeed, created about the involvement of the accused particularly when at about the same time one cashier by name Rane, concerned with deposits in DDS account, was suspended in connection with inquiry in respect of DDS account. The deposit receipts are not on record. The panchas, before whom the specimen signatures were allegedly obtained, have turned hostile. The evidence of Branch Manager, is far from satisfactory. In the circumstances, in my opinion, the accused must get benefit of doubt. Hence the appeal is rejected.

(SMT. RANJANA DESAI, J.)